

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

WP(C).No. 5135 of 2007(J)

**AGAINST THE ORDER IN IA 5551/2006 IN
OS.152/2004 of II ADDL.SUB COURT,KOZHIKODE**

PETITIONER:

**MAPPALA RAJU, S/O.KUMARAN,
AGED 58 YEARS, RESIDING AT ELAKKADU AMSOM,
PUTHIYANGADI DESOM, KOZHIKODE TALUK,
KOZHIKODE DISTRICT.**

**BY ADV. SMT.PRABHA R.MENON
SRI.M.KRISHNAKUMAR**

RESPONDENTS:

- 1. SYAMALA SATHYAN, D/O.KITTAN,
AGED 52 YEARS, PUTHIYANGADI AMSOM, DESOM,
KOZHIKODE TALUK, KOZHIKODE DISTRICT.**
- 2. KALLARAM KOTTIL SATHYAN,
S/O.RARICHAN, AGED 58 YEARS, PUTHIYANGADI AMSOM,
DESOM, KOZHIKODE TALUK, KOZHIKODE DISTRICT.**
- 3. P.MOHANDAS, S/O.CHANDUKUTTY,
AGED 50 YEARS, RESIDING AT ELATHUR AMSOM,
PUTHOOR DESOM, KOZHIKODE TALUK.**

**BY ADV. SRI.K.M.JAMALUDHEEN for R1
SMT.LATHA PRABHAKARAN
SRI.A.K.SUKUMARAN**

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 17/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WPC.NO.5135/2007 J

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF I.A.NO.859/2005 DTD. 22/02/2005.

EXT.P2: COPY OF COUNTER AFFIDAVIT IN I.A.NO.859/2005 DTD.5/03/2005.

EXT.P3: COPY OF ORDER DTD. 26/11/2005 IN I.A.NO.859/2005.

EXT.P4: COPY OF I.A.NO.607/2006 DTD. 8/02/2006.

EXT.P5: COPY OF THE ORDER DTD. 15/03/2006 IN I.A.NO.607/2006.

EXT.P6: COPY OF JUDGMENT DTD. 13/10/2006 IN WP(C) NO.17124 OF 2006.

EXT.P7: COPY OF IA.NO.5551/2006 DTD. 13/11/2006.

EXT.P8: COPY OF THE ORDER DTD. 18/01/2007 IN I.A.NO.5551/2006.

/TRUE COPY/

P.S.TO JUDGE

KSS

M.N.KRISHNAN, J

=====

W.P.(C) No.5135 OF 2007

=====

Dated this the 17th day of August 2007

JUDGMENT

This writ petition is filed to set aside Ext.P8 order and modify issue Nos. 1 and 2. The suit is one for specific performance of a contract. It is the case of the plaintiffs that on 12.9.2003 the husband of the first defendant as the power of attorney holder of the first defendant had entered into an agreement with the plaintiffs for sale of the property and has filed a suit for specific performance. On the contrary, the first defendant would contend that the agreement has been created with the connivance of the second defendant on a stamp paper purchased to suit the convenience and at a time when the power of attorney was not in force or in other words, the first defendant would contend for the position that the husband has no power of attorney to execute the alleged agreement as contended by the plaintiffs. This matter had been shuttling between this court and the trial court for the purpose of framing the issues and for casting the burden.

2. After hearing both sides, in order to have a final quietus to the matter this court itself decided to frame the issues and send the matter back

-:2:-

to the court below for trial. Accordingly, the following issues are framed.(1) Whether the suit agreement is executed on the date as alleged in the plaint or as contended by the first defendant in her written statement.(2) Whether the power of attorney was in existence at the time of the alleged agreement. Being a suit for specific performance of a contract, the agreement has to be proved as contended by the plaintiffs and therefore the plaintiffs are directed to start the evidence in this case. It is a proposition of law that the burden of proof never shifts and ultimately the whole matter has to be decided after the evidence is adduced by both sides on facts in dispute.

Writ petition is disposed of accordingly.

M.N.KRISHNAN, JUDGE

Cdp/-